

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2014/CLE/gen/00297

B E T W E E N

SILVER CAY CLUB LIMITED

Claimant

AND

GELITHA FERGUSON

Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Ms. LaShona M. Knowles of Cadwell & Co., Counsel
for the Claimant

Mr. Carlton Martin of Martin Martin & Co., Counsel for the Defendant

Hearing dates: March 6, 2025; April 30, 2025 and June 30, 2025

Civil Procedure and Practice- Application to set aside order appointing a receiver- Application for extension of time — Parts 3, 11 and 39 Supreme Court Civil Procedure Rules 2022, as amended (CPR 2022) - Prerequisites to an application to set aside an order – Rules 11.20 and 39.5 CPR 2022

Application to vary or amend consent order – Application for judgment on admission – Parts 42 and 14 Supreme Court Civil Procedure Rules, 2022

The Claimant instituted action alleging breach of contract of the Defendant and failure to pay maintenance fees and water charges. The parties subsequently filed a consent order in the amount of the pleaded claim. The Defendant failed to satisfy the consent order. The Claimant obtained an order for the appointment of a receiver with power to sell the Defendant’s home in satisfaction of the judgment debt. The Defendant applied to set aside the appointment of the receiver and sought an extension of the time within which to make the application. The Claimant applied for a judgment on admissions as well as a variation of the consent order to include amounts accrued since the making of the order.

Held: The Defendant’s application for an extension of time is dismissed. The Defendant provided no evidence upon which the court could exercise a discretion to extend time within which to pursue the application to set aside the appointment of a receiver. The court also determined that, in any event, the jurisdiction under Rule 39.5CPR 2022 to set aside the order appointing the receiver was improperly invoked.

The Claimant’s application for a judgment on admissions was dismissed. The Claimant’s application to vary or amend the consent order was dismissed. The court held that the Claimant was bound by its pleadings.

RULING

CARD-STUBBS, J

INTRODUCTION

[1.] This ruling addresses several applications by the parties. The applications are described below. The applications concern the appointment of a receiver and the amount of the judgment as by a consent order.

[2.] For the reasons that follow, the Defendant’s applications are dismissed.

[3.] For the reasons that follow the Claimant’s application is dismissed in its entirety.

BACKGROUND

The suit

[4.] The Claimant, “Silver Cay Ltd.”, is a company and described as the owner “of an estate of certain parts of the Silver Cay Club development.” The Defendant, Mrs. Ferguson, is the owner of one of the units in the development. On March 11, 2014, Silver Cay Ltd. brought an action against Mrs. Ferguson by filing a Writ of Summons and Statement of Claim. Silver Cay Ltd. alleged that Mrs. Ferguson failed to pay certain fees and sued her for the outstanding payments. The suit was for the sum of \$10,669.50 representing outstanding sums for Maintenance Fees and Water Charges payable by the Defendant.

The Consent Order

[5.] At a Case Management Conference held on May 8, 2017, the parties came to a consent position. The terms of the consent order dated May 8, 2017 and filed July 17, 2017, were:
“Judgment be entered for the Plaintiff in the sum of \$10,669.50 with interest at the prevailing rate under the provisions of the Civil Procedure (Award of Interest) Act, 1992 and costs to the Plaintiff to be taxed if not agreed.”

Examination of Judgment Debtor

[6.] Mrs. Ferguson failed to satisfy the order and on December 9, 2021, Silver Cay Ltd., as Judgment Creditor, secured an order for the examination of Mrs. Ferguson as Judgment Debtor. That examination took place before the Deputy Registrar on March 3, 2022.

Appointment of Receiver

[7.] On January 30, 2023, Silver Cay Ltd. filed an application for leave to appoint “a Receiver by way of Equitable execution to sell” Mrs. Ferguson’s unit in the development “by public auction or private contract...” The application was supported by the affidavit evidence of Hagah Strachan, filed January 30, 2023. The affiant, Hagah Strachan, averred that despite several demands made on Mrs. Ferguson, she failed to satisfy the consent order and that maintenance fees continued to accrue.

[8.] Silver Cay Ltd.’s application was also supported by the affidavit evidence of Cecil Ferguson, President of the Claimant. The affidavit, filed on November 16, 2023, purported to recount the numerous attempts made by Silver Cay Ltd. to have Mrs. Ferguson pay the outstanding fees. The president’s evidence is that as at October 27, 2023, Mrs. Ferguson owed \$148,994.64 in outstanding fees.

[9.] On December 14, 2023, by way of a court order, a Receiver by way of equitable execution was appointed and empowered “to sell by public auction or private contract” the residence

owned by the Mrs. Ferguson. On August 21, 2024, on the application of Silver Cay Ltd., the Court rescinded the appointment of the named receiver and appointed another professional to act in his stead. After the death of the new appointee, the Court rescinded that appointment and appointed another professional to act in his stead. That third order was made on December 4, 2024.

The Current Applications

[10.] The current contention between the parties relate to the appointment of the receiver and what the receiver may levy on for the payment of the judgment debt. In summary, the applications of the Defendant seek to set aside the appointment on the basis that the appointment was unjust and unfair given the amount of the judgment debt. The essence of the Defendant's filed application is that the consent order does not allow for the Claimant to appoint a receiver or, alternatively, that the appointment is not just and equitable in the circumstances. At the hearing of the application, the Defendant did not pursue the contention that a consent order was not a judgment which permitted the appointment of a receiver. This Court must also decide whether the Defendant filed her application in time and whether the court ought to exercise a discretion to extend the time within which to file the application.

[11.] The Claimant contends that the receiver was properly appointed and ought to be allowed to execute for fees in arrears. Such a sum would be greater than that awarded by the consent order. On this basis, the Claimant seeks leave to amend or vary the consent order. The Claimant also seeks leave to enter a judgment on admissions.

[12.] I will deal with the applications together.

ISSUES

[13.] The issues before me are:

1. Whether the court should grant the Defendant an extension of time within which to pursue the application to set aside the order appointing a receiver and, if so,
2. Whether the order appointing a receiver should be set aside.
3. Whether the Claimant is entitled to a judgment on admissions?
4. Whether the court has an inherent jurisdiction to amend or vary a consent order in these circumstances and, if so, whether it should exercise that jurisdiction.

THE DEFENDANT’S APPLICATION

[14.] The Defendant’s application filed on the 26th day of April 2024 is made pursuant to Parts 11,12,13,15 and 16 of the CPR 2022, and the Court’s inherent jurisdiction.

[15.] On the 24th day of February, 2025 the Defendant filed a Notice of Application for an order striking out the proceedings. That application was not pursued in its original form. On March 3, 2025, the Defendant filed a notice of application for an amendment of the February 24, 2025 application, said to be “supplemental to” the Notice of Application of April 2024. The March 3, 2025 application sought to amend the Defendant’s application to include, inter alia, an application to set aside the “Receivership order herein dated the 14th day of December 2023 and all other related order/s appointing receiver/s and or the present receiver...”. That application also seeks a stay of the execution of the order for a stay. That application further “seeks any necessary leave of the Court, or relief such as extension of time under and or pursuant to Rules 39.5, 3.1 of the CPR 2022 and the inherent jurisdiction of the Court for the making of the application/s to set aside the order/s appointing the receiver.”

[16.] The Application is supported by the Affidavits of Gelitha Ferguson filed on April 26, 2024 ; February 2, 2025 and March 3, 2025.

ISSUES 1 and 2 - Extension of time and the appointment of a receiver

LAW AND ANALYSIS

[17.] Firstly, I will deal with the application for an extension of time for the making of the Defendant’s application.

[18.] The appointment of a receiver was first made on December 14, 2023. The order of the court reflects that the Defendant/Judgment Debtor was not in attendance. The Claimant subsequently applied to revoke the appointment of the first named Receiver and substitute another. That application was acceded to and an order was made on August 21, 2024. At that hearing, the Defendant/Judgment Debtor was represented by Counsel. On the death of the new appointee, the Claimant again sought, by application, to revoke the appointment of the second-named Receiver and to appoint another. That application was acceded to and an order was made on December 4, 2024. Only subsequent to this third and last order did

the Defendant file her several applications, including a challenge to the December 14, 2023 order.

[19.] The Defendant seeks an extension of time pursuant to Rule 3.1 and Rule 39.5, 3.1 of the CPR 2022.

[20.] Rule 3.1 CPR 2022 provides

3.1 Court to state calendar date.

When making any judgment, order or direction which imposes a time limit for doing any act the Court must, wherever practicable, state —

(a) the calendar date; and

(b) the time of day, by which the act must be done.

[21.] Part 39 CPR 2022 makes provisions for procedural requirements for a trial. Rule 39.5 provides as follows:

39.5 Application to set aside judgment given in party's absence.

(1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.

(2) The application must be made within fourteen days after the date on which the judgment or order was served on the applicant.

(3) The application to set aside the judgment or order must be supported by evidence on affidavit showing —

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other judgment or order might have been given or made.

[22.] A judgment or order made as a result of a trial [r.39.5(1)] is a prerequisite to an application pursuant to Rule 39.5. In this matter, there was no “trial” of the issues. The matter came to a halt subsequent to case management proceedings when the parties agreed the terms of a consent order. There is no judgment or order made as a result of a trial. I find that Rule 39.5 is inapplicable in this instance.

[23.] There is a counterpart rule in Part 11 CPR 2022 dealing with general rules for application for court orders. Rule 11.20 similarly sets out the prerequisites for an application to set aside an order made in the absence of a party. Rule 11.20 provides

11.20 Application to set aside order made in the absence of a party.

(1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than fourteen days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing —

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other order might have been made.

[24.] I include a reference to Rule 11.20 for purposes of comparison and distinction. Such a comparison and distinction is helpful in determining the scope of application of each rule. Part 39 relates to trials. Part 11 relates to general applications. Part 39 is inappropriate for orders made outside of the context of a trial. Both Rule 39.5 and Rule 11.20 set out certain prerequisites. The rules provide that an application to set aside [a judgment or] an order made in the absence of a party must:

1. be made within 14 days/not more than 14 days after service of the order/judgment,
2. Be supported by evidence on affidavit showing a good reason for the Applicant's failure to attend the hearing and
3. Be supported by evidence on affidavit showing that it is likely that had the applicant attended the hearing, a different order might have been made.

In each case, the prerequisites are conjunctive. An applicant who avers that an order or judgment was made in his/her absence, must comply with both the timeline and the evidential requirements.

[25.] The Defendant has applied for an extension of time within which to make the application to set aside the order. On an application for an extension of time, a court must ordinarily take into account factors such as the significance of the non-compliance, the reason for the delay, the promptness of the application, the impact on the proceedings and the potential prejudice to the other party. A court must also bear in mind the overriding objective of dealing with cases justly and efficiently, which includes enforcing compliance with the rules and the timelines therein.

[26.] Rules 39.5 and 11.20 provide that a party ought to file an application to set aside an order within 14 days after the date/not more than 14 days after the date of being served with the order. By this requirement, an applicant's evidence must include evidence of when they were served with the order and when they had notice of the order. On an application for an extension of time, an applicant must give evidence of how promptly they acted to challenge the order.

[27.] There are good reasons for rules such as Rule 39.5 and Rule 11.20. A party ought to have knowledge of an order as it relates to the matter that he is involved in. This gives the party an opportunity to comply with the order or to challenge it. An order is subject to challenge, including a challenge on appeal. The challenge is to be made within the procedural timelines set down subject to the court extending the time for the making of such an application. One good reason for the timeline is the requirement for finality in proceedings. Another party is entitled to act on the strength of an order that has not been subject to challenge. It could be prejudicial to the party in whose favour the order is made if the challenge to the order is made after much delay and after the party has taken certain steps in reliance on the order.

[28.] In the case before me, the three orders were made December 2023, August 2024 and December 2024, respectively. The Defendant's first application was filed on April 26, 2024. The Defendant, the applicant in this instance, must provide evidence sufficient to cause a court to exercise its discretion to extend time. Such evidence would include when the party was served with the order, the reason for the non-compliance with the time frame under the rules and how promptly the applicant acted to file an application to set the order aside. The applicant must provide a good reason for non-attendance at the hearing. The applicant must also satisfy the requirement that had the applicant been present at the making of the order being challenged, that the court would likely have made another order.

[29.] Firstly, there is no evidence from the Defendant as to when they were served with the December 14, 2023 order. Equally, there is no averment that the Defendant was not served. The application filed April 26, 2024 is silent on the matter of service although it is an application "for an order setting aside receiver order". The application and the supporting affidavit are silent on the issue of service of the December 2023 order. Subsequent to that, it is clear from the record that the Defendant was represented on August 21, 2024 when the December 2023 order, was in essence, varied. On August 21, 2024, there was an appointment of a new receiver. At that time, had the Defendant not been serviced with the December 2023 order, notwithstanding the earlier-filed application, the Defendant would have been in a position to indicate that she was never served with the December 2023 order.

[30.] Secondly, there is no evidence from the Defendant as to whether the current application was within 14 days of the service of the December 2023 order or having had notice of the December 2023 order. There is no evidence as to whether the application was filed promptly. There is no evidence by which the Court can assess the length of any delay. There is no explanation as to why the application was not filed earlier than it was. The first application filed by the Defendant was on April 26, 2024. Only by application dated March 3, 2025, did the Defendant seek to include an application for an extension of time “if necessary”.

[31.] A reasonable inference to be drawn from the date of the application together with the application for leave “if necessary”, bearing in mind that the application is made in relation to an order that had been obtained more than 4 months prior to the application being filed, is that the Defendant failed to comply with the timeline. That this court has to resort to inference reflects the lack of evidence on this application by which the Defendant seeks the exercise of the court’s discretion in her favour.

[32.] Affidavit evidence was filed on April 26, 2024 on behalf of the Defendant. That affiant seeks to aver that the Defendant had a good defence and was not “at present in possession of a sufficient amount of the file or documents in this action to make out her full defence against the claim...and to support her Notice of Application filed herewith.” The suggestion is that the Defendant needed time to get documents, peruse same and file a full defence. Notably, the averment that the Defendant has a good defence came subsequent to the filing of a Defence and Counterclaim on April 30, 2015. It also came subsequent to Case management and subsequent to the consent order agreed at Case Management. In those circumstances, it is difficult to accept the bare averments as credible or as a good reason for any sort of delay on the part of the Defendant. Notably, that affidavit does not speak to the delay in filing the application that it supports, viz, the current application.

[33.] In the affidavits of the Defendant on February 2, 2025 and again on March 3, 2025, the Defendant sought to show that the order appointing the receiver was unjust. The evidence of the Defendant is that “no judgment was entered pursuant to the consent order” and that it is unjust to appoint a receiver for the sum in dispute. The evidence of the Defendant is also that she received a demand letter for a certain figure which included the sum under the consent order. Her evidence is that the letter advised that enforcement action would be taken if the demand was not complied with.

[34.] The weight of the evidence in the last two affidavits, concerns the Defendant’s view of the appointment of the receiver. This is an acknowledgement of the appointment. The

acknowledgement is silent on when the Defendant became aware of the appointment and why the application to set aside the appointment was made at the time that it was made.

[35.] By the subsequent applications, the Defendant sought to “amend” the April 2024 application. The Claimant has already taken steps in reliance on the December 2023 order. In this case, the Claimant has already sought and obtained two subsequent orders concerning the initial appointment of the receiver which the Defendant seeks to impugn. The Claimant has proceeded on the order as final. Again, there is no explanation by the Defendant as to why the filed application was filed months after the order appointing a receiver was made or why the subsequent amendments were made after the August 2024 and December 2024 orders had been made and acted upon.

CONCLUSION ON APPLICATION FOR EXTENSION OF TIME

[36.] Upon careful consideration of all the evidence provided by the Defendant, I find that there is an absence of any material before the Court that would justify the exercise of discretion in favour of the Defendant regarding an extension of time within which to file the application to set aside the appointment of the receiver. The Defendant has not produced evidence explaining when she was served with the relevant order, nor has she offered a credible reason for her failure to comply with the prescribed timeline. There is no satisfactory explanation for the delay in filing the application or any indication that the application was brought promptly after being served with the order or becoming aware of the order. Having regard to these deficiencies, this Court is not satisfied that the interests of justice warrant the granting of an extension of time.

[37.] Accordingly, the application for an extension of time is refused.

ISSUE 2. Application to set aside receiver

[38.] Having regard to this Court's decision to refuse leave to file the application outside the prescribed time, I am constrained to dismiss the application to set aside the appointment of the receiver. In any event, the jurisdiction under Rule 39.5 CPR2022 to set aside the order appointing the receiver is improperly invoked. It is my determination that, in this instance, the order appointing a receiver is not a judgment or order caught by rule 39.5 CPR 2022.

Application for a stay of execution

[39.] The Defendant’s application also seeks “a stay of execution of the order made herein for the sale of her home until these proceedings are fully heard and or pending the grant of any leave that may be sought by the defendant in these proceedings and pending any appeal that may be associated with these proceedings, should there be an appeal for any reason.” This appears to be a pre-emptive application, but no ground or reason was advanced in support the request for a stay in the event that the Defendant was unsuccessful on her application.

[40.] There are no pending directions for a “full hearing”. There is a claim and there is a consent order that answers the claim. The Claimant has sought execution of the order. The current status of the case is that there is an existing claim and a consent order that resolves the claim. The Claimant has taken steps to execute the order, and based on the material before the Court, there is no justification for granting a stay of execution at this time. Consequently, the application for a stay is dismissed.

[41.] On March 6, 2025, this Court granted a stay of execution, which stay was extended on April 30, 2025. The purpose of that stay was to suspend execution pending the determination of the Defendant’s applications. In light of the decisions reached above, the stay previously in effect is now lifted

THE CLAIMANT’S APPLICATION

[42.] On May 6, 2025, the Claimant filed an application for judgment on admissions and for leave to amend/vary the consent order. The Claimant’s application is made pursuant to Part 1, Rule 1.1, Part 14, Rule 14.3 Part 42, and Part 43, Rule 43.10, of the CPR 2022, and pursuant to the Court’s inherent jurisdiction.

ISSUE 3. Whether the Claimant is entitled to a Judgment on Admissions?

[43.] The Claimant seeks a judgment on admissions, relying on the consent order as an admission of the sum awarded in the consent order and a gateway to admissions of sums in arrears. Alternatively, the Claimant argues that the consent order is to be varied to allow for sums in arrears.

APPLICATION FOR JUDGMENT ON ADMISSIONS

LAW AND ANALYSIS

[44.] The Claimant applies for judgment under Part 14 which deals with Judgment on Admissions. Rule 14.1 provides for the making of an admission. Rule 14. 4 provides for the application for judgment where a party makes an admission. Rule 14. 3 deals with variation of an order. Rule 14.1 provides:

14.1 Making on admission.

(1) A party may admit the truth of the whole or any part of any other party's case.

(2) A party may do this by giving notice in writing, such as in a statement of case or by letter, before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgement of service containing the admission.

(4) The defendant may do this in accordance with the following rules —

(a) rule 14.6;

(b) rule 14.7; or (c) rule 14.8.

(5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.

[45.] Rule 14.4 provides:

14.4 Admission by notice in writing – application for judgment.

(1). Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.

(2) The terms of the judgment must be such as it appears to the Court that the applicant is entitled to on the admission.

[46.] Rule 14.13 provides:

14.13 Either a claimant or a defendant may apply to vary an order made under this Part.

[47.] A judgment on admissions is a pathway to judgment when the whole or part of a claim is unequivocally admitted in writing. In **Christison Deleveaux v Bank of The Bahamas Limited (2023/CLE/GEN 621; June 26, 2025)**, this Court considered the effect of Part 14 and came to the following conclusions at paragraphs 32, 33, 34 and 36 of the written ruling:

[32] The rules provide that an admission may be made in pleadings or in documents such as letters written before the action was brought: Rule 14.(1)(2). In an application for a judgment on admissions, a party must show that the admission resolves an issue of facts or law in their favour and that such admission would result in an entitlement to a judgment. The admission must be with reference to the party's case and thus must be clear and unambiguous. Judgment, if granted, would be granted on such terms as a Court finds that the applicant is entitled to on an admission: Rule 14.(4)(2). This requires an assessment of the party's case and the alleged admission. Unlike a judgment in default which is a procedural consequence, a judgment on admissions is a judgment on the merits.

[33] The effect of a clear admission of the whole or part of a claim is that the Defendant cannot, and should not, mount a defence to that claim, or to that part of the claim, that is admitted. An admission is an admission as to liability. There may also be an admission as to quantum. If a specific sum is claimed, the admission may be to the specific sum or part thereof. When an admission is made, no issues are joined between the parties in that regard and therefore that part of the claim may be summarily disposed of. Such a disposition saves time and costs. Such a disposition effects a resolution, in part or in whole, for the affected parties.

[34] Having regard to the effect of an admission, a court must consider (1) whether there is in fact a clear and unequivocal statement that amounts to an admission of the claim or part of the claim and (2) whether, in the circumstances, it would be just to grant such order "as it appears to the Court that the applicant is entitled to on the admission."

....

[36] A good starting point to consider judgment on admissions is to consider the case that a Claimant must make out in the absence of an admission. Such a consideration is also useful to assist the court in determining the nature of the admission and the effect of the admission so that judgment, if granted, is granted on such terms as "it appears to the Court that the applicant [for judgment] is entitled to on the admission". An admission serves to deprive a Defendant of a defence to the claim. An admission obviates the need for the Claimant to prove the fact or issue admitted and can serve to lessen a cost award against the Defendant.

[48.] The starting point for any application under Part 14 CPR 2022 is that the applicant must provide evidence of a written clear and unequivocal statement that amounts *to an admission of the claim or part of the claim*.

[49.] The Claimant in this case holds a consent order in its favour in the sum of \$10,669.50. The Claimant argues that this amounts to an admission by the Defendant. The Claimant argues that the consent order is an admission in writing. The Claimant also submitted that the Defendant admitted to owing further arrears but the Claimant failed to provide any evidence of such an admission.

[50.] A judgment on admissions is *an admission in writing* of the whole or part of the *claim*. The claim as made in the statement of claim filed is for \$10,669.50. There is no evidence of an admission by notice in writing (such as in a statement of case or by letter) or in an acknowledgement of service as per Part 14. What has been filed as an order of the court is a consent order. A consent order in the amount of the sum claimed may very well be taken to be an admission of the claim but that does not appear to be what the rules under Part 14 refer to. The purpose of Part 14 is to provide a pathway to a judgment in the specified circumstances. The Claimant already holds an order in its favour. An application under Part 14 does not take the Claimant any further because the Claimant already holds an executable order in the sum of the amount claimed in its pleadings.

CONCLUSION - DISMISSAL OF APPLICATION FOR JUDGMENT ON ADMISSIONS

[51.] In the course of submissions, it became clear that a judgment in the amount of the sum claimed is not the concern of the Claimant. The Claimant's contention is that the court ought to give leave to enter a judgment for the arrears accrued and accruing. This contention is founded on a misapprehension of the nature and purpose of the applicable rules.

[52.] The rules pertaining to judgment on admissions are designed to address admissions of a party's *case*. The admissions are to be clear and unequivocal, specifically relating to *the claim* as set out in the pleadings or supporting documents. The Claimant's application did not comply with these requirements, as it sought judgment for arrears beyond what was admitted or established in writing and beyond what was claimed in its own case. As a result, the application for judgment on admissions is hereby dismissed.

ISSUE 4. Application to amend or vary a consent order.

Application to amend or vary

[53.] The Claimant seeks to pray in aid Part 42, Rule 42.10 and the Overriding Objective inviting the court to "amend the consent order" or to use its inherent jurisdiction to provide for a variation of the consent order. The Claimant seeks an order that would include the amount of arrears owing.

[54.] The application is for "leave to amend the Consent Order pronounced on the 8th day of May 2017 and filed on the 17th day of July 2017 and/or in the alternative the Court exercise its inherent jurisdiction to make a Further Order, confirming the Respondent's

liability for ongoing association fees accrued since the date of the Consent Order and continuing until satisfaction of the judgment debt and to serve the same on the Defendants personally and/or Counsel on record for the Defendants.”

[55.] The Claimant’s application is supported by the affidavit of Cecil Ferguson filed on May 5, 2025. That affidavit reads in part:

2. I am duly authorized to make this Affidavit in support of my application for the variation or further order in respect of the Consent Order made on the 8th day of May 2017 (the 'Consent Order'). I make this Affidavit in support of my application for:

Leave to amend the consent order filed herein on the 8th day of May 2017, to include for related fees to the accruing association fees; and in the alternative a further order to ensure the Respondent’s liability for association fees accruing from the date of the Consent Order to the present date.

3. The Claimant is a Homeowners Association carrying on the business of administering and managing all matters related to Silver Cay Club Limited (hereinafter referred to as “the Association”) including inter alia: landscaping and maintenance of all common areas as laid out in the covenants, agreements and conditions contained in a Lease dated the 28th day of December 1978 made between the Claimant and Kurt Martin, which is duly recorded in the Registry of Records in Volume 3085 at pages 202 to 218 (hereinafter referred to as “the said Lease.”) The said Lease is Exhibited at J.B. 2 in the Affidavit of Jaimie Brown filed on the 9th day of February 2015.

4. I am advised and verily believe that upon the review of the Consent Order, it became apparent to my Attorney that the Consent Order as filed on the 17th day of July 2017 inadvertently omitted the insertion of the Defendant shall further be liable for all arrears accruing from the date of the judgment to the date of payment, including any delinquent condominium fees, late charges, and reasonable enforcement costs, as may be assessed or proven.

5. In the circumstances the purpose of this Affidavit is to correct the omission in the Consent Order to reflect the necessary changes as mentioned hereinabove. There is now produced copies of the proposed amended draft Consent Order or Further Order marked and exhibited “CF-1.”

6. I am advised and verily believe that if the amendments were to be granted, the Defendants will not be prejudiced or caught by surprise.

FACTS RELEVANT TO THE APPLICATION

7. On the 8th day of May 2017, this Honourable Court made a Consent Order in favour of the Claimant in the amount of \$10,669.50 with interest at the prevailing statutory rate under the Civil Procedure Award of Interest) Act, 1992, and costs to be taxed if not agreed. There is now produced and shown a true and correct copy of the Consent Order dated the 8th day of May 2017 exhibited and marked as “CF-1.”

8. The Consent Order made no provision for association fees that would continue to accrue due to the delay in payment by the Respondent. At the time the Consent Order was made, both parties were aware that such fees would continue to accrue due to the delay in payment.

9. Since the date of that Order, the Defendant has failed and/or refused to make any payment toward the said sum or to honour the terms of the Consent Order.

10. As a result of this ongoing non-compliance, interest has accrued on the judgment debt, and the arrears of condominium fees and other related charges have continued to increase, presently amounting to approximately \$194,538.50 as at 30th day of April 2025. There is now produced and shown a true and correct copy of the Silver Cay Club Statement of Accounts and Assessment dated the 30th day of April 2025 exhibited and marked as “CF-2.”

11. The accrual of association fees is directly tied to the Respondent’s failure to comply with the terms of the Consent Order and the usual quarterly association fees agreed to. These fees continue to accrue as a direct result of the Respondent’s willful refusal and deliberate efforts in making the agreed and obligated payment.

12. On the 14th day of December 2023, this Honourable Court granted an Order appointing an Equitable Receiver, in recognition of the Defendant’s ongoing non-compliance and the need for equitable enforcement of the Claimant’s claim.

13. The Claimant has also incurred enforcement-related legal and administrative costs, including the costs of applying for and varying the Receiver’s appointment, legal fees, court attendances, and service of documents, all of which have become necessary due to the Defendant’s continued refusal to honour the Consent Order.

THE OMISSION IN THE CONSENT ORDER

14. The Consent Order is silent on the issue of ongoing association fees, which has led to uncertainty and a continuing financial burden on the Claimant. It is clear that these fees were foreseeable at the time of the Consent Order, and their omission from the original order has resulted in an unjust situation where the Claimant and other Community Unit Owners’ continues to bear financial responsibility for the Respondent’s failure to comply.

[56.] The Claimant’s application is based on several grounds, largely premised on the submission that the consent order “is silent on the issue of association fees continuing to accrue due to the Respondent’s willful refusal and blatant disregard in paying the agreed and quarterly obliged sums since the commencing of this application”.

[57.] The argument of the Claimant is that the intent of the consent order was the payment of “what was outstanding at that particular time, not to remove any future payments.” Counsel argued that the Defendant had disregarded the consent order and has refused to pay the various fees since the action thus there are accruing balances. Counsel argued that it is “in the interest of justice and is necessary to give full and practical effect to the consent order that the defendant be held liable for the accruing obligations due to the period of noncompliance, as it not only impacts one particular unit, but a community at large.”

[58.] The Defendant opposes the application and submits that the court is *functus officio*.

LAW AND ANALYSIS

[59.] The Claimant prays in aid the Overriding Objective of the CPR.

[60.] Part 1 CPR provides:

Part 1 –

1.1 The Overriding Objective.

- (1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.
- (2) Dealing justly with a case includes, so far as is practicable:
 - (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate to —
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly;
 - (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
 - (f) enforcing compliance with rules, practice directions and orders.

1.2 Application of overriding objective by the Court.

- (1) The Court must seek to give effect to the overriding objective when —
 - (a) exercising any powers under these Rules;
 - (b) exercising any discretion given to it by the Rules; or
 - (c) interpreting these Rules.
- (2) These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

1.3 Duty of parties.

- (1) It is the duty of the parties to help the Court to further the overriding objective.
- (2) In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure keep his duty under paragraph (1)

[61.] The overriding objective of the CPR (Part 1) is “to enable the Court to deal with cases justly and at proportionate cost”: Rule 1.1(1). The rules of procedure are to be construed and applied in such a manner as to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits: Rule 1.2. Each party has a duty to assist the Court in furthering the overriding objective and in applying the rules, the Court may take into account a party’s failure to keep that duty: Rule 1.3.

[62.] Part 42.10 of the Supreme Court Civil Procedure Rules, 2022 provides for the correction of an order in discrete circumstances. It provides:

42.10 Correction of error in judgment or order.

- (1) The Court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- (2) A party applying for a correction must give notice to all other parties.

[63.] It is important to note that there is no clerical mistake that the Claimant can point to in this case.

[64.] In the instant case, Counsel for the Claimant argued that it was the intention of the parties that the obligation to continue paying would accrue and that an amendment to vary the order to reflect the amounts accrued and owing would represent the intention of the parties. Counsel argued that the consent order “is silent” on the issue of accrued association fees. The Claimant argues that the consent order should have provided for an “omnibus clause” to cover ongoing payments and outstanding arrears and that the omission was accidental.

[65.] It seems to me that if it were the intention of the parties to include ongoing obligations in the consent order, then such an intention would be reflected somewhere. There is no such evidence before me. Counsel sought to rely on the letters of demand, penned by the Claimant and served on the Defendant, as a communication of intent and understanding. Counsel for the Claimant invites the court to infer that there was an “accidental omission” of an omnibus clause that would cover all arrears. It is my determination that those letters of demand, at their highest, indicate the intention of the Claimant to recoup outstanding fees and the awareness of the Defendant that there was a claim being made for the total arrears outstanding. Letters from the Claimant to the Defendant, in the absence of the Defendant’s response, do not demonstrate intention on the part of the Defendant. It is difficult to see how post-consent order letters written solely by

the Claimant can be used as a basis to vary the consent order when there is no input or response by the Defendant.

[66.] The Claimant's argument appears to be a fanciful one. If the interpretation proposed by Counsel was in fact the interpretation to be applied to the consent order, it seems to me that the parties could cure any omission by consent. Alternatively, the onus is on the Claimant to provide evidence of such mutual intention concurrent with the making of the consent order. The burden of proof is on the Claimant to provide evidence that what is being advanced was in fact the intention of the parties at the time that the consent order was made and that there was a slip or an error made.

[67.] An error is not based on what the Claimant would have wished the order to reflect, in hindsight. The Claimant must produce evidence of the intention of the parties. Examples of such evidence would be correspondence between the parties or an agreement to a draft order on terms different from the order subsequently perfected. There is no such evidence before me. There is nothing from which this Court can infer an understanding or agreement between the Claimant, Silver Cay Ltd., and the Defendant, Mrs. Ferguson, that the consent order would cover any amount that accrued subsequent to the claim or to the entering of the consent order.

[68.] That being said, there is a greater hurdle that the Claimant must face. That hurdle, to my mind, is fatal to the application for a variation on any of the grounds proffered, including the invocation of the inherent jurisdiction of the court.

[69.] Counsel for the Claimant argued that the court has an inherent jurisdiction to act in the interest of justice" taking into consideration that the intended effect of the consent order was ... to pay off the debt at that time that [it] was owed, but not forgetting that there are ongoing arrears and maintenance ...with the expectation of the parties making their usual payments." Claimant invited the court to vary the order to include an omnibus clause since the expectation was that the Defendant would pay the association fees whether or not it was claimed. Such an argument invites the court to ignore the nature of the claim in these proceedings.

[70.] In essence, having claimed arrears by virtue of breach of contract, the Claimant wishes to vary a perfected order to include arrears that have accrued since the order. This course of action would serve to ignore the pleadings, no amendment being sought. This course of action would serve to avoid a determination of the rights of the parties, in the absence of an admission by the Defendant to the sums said to have accrued since the

consent judgment. It is apparent that such a course of action does not serve the interest of justice.

[71.] It is a rule of law and procedure that a party is bound by its pleading. There are very good reasons for such a rule. Pleadings serve to delineate the boundaries of the dispute between the parties. The pleadings notify the opposing party of the case that they must meet and the pleadings assist the court in identifying the matters requiring adjudication. One result is that the parties are prohibited from seeking remedies beyond the parameters of their pleaded case. If a party wishes to revisit its case, it must seek leave to amend its case.

[72.] In this case before me, the only pleaded claim for damages made by the Claimant is the sum of \$10,669.50. The claim was not amended. There is a consent order for the pleaded amount. Had the matter proceeded to trial on the pleadings as laid, that amount would have been the ceiling awardable to the Claimant by way of damages. There is no legal basis for the Claimant, in hindsight, to seek to vary a court order to include amounts that accrued after the pleadings and which amounts are not contemplated by the pleadings.

[73.] The Claimant relied on several cases, which establish the court's jurisdiction to correct an order. Counsel for the Claimant cited *Mutual Shipping Corp v Bayshore Shipping Co Ltd* [1985] 1 WLR 625; *Johann D. Swart et al. v Apollon Metaxides and Silver Point Condominium Apartments* COA No. 78 of 2012 and *Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc (No. 2)* [2001] RPC 13; [2001] EWCA Civ 414

[74.] In *Mutual Shipping Corp v Bayshore Shipping Co Ltd* [1985] 1 WLR 625, an arbitrator mistakenly transposed the names of the parties and thus incorrectly made an award in favour of the wrong party. The Court of Appeal was unanimous in the determination that it was in the interest of justice for the award to be amended in order to reflect the arbitrator's finding of fact. Sir Roger Ormrod noted in his judgment that the nature of the error was an accidental slip that ought to be corrected: "there has undoubtedly been an error which, in my judgment, was due to an "accidental slip" within the section, the accident being the mental lapse which caused the arbitrator to transpose in his mind the parties which led him to refer to the one when he plainly intended to refer to the other...".

[75.] In *Johann D. Swart et al. v Apollon Metaxides and Silver Point Condominium Apartments* COA No. 78 of 2012, the judgment of the local appellate court was delivered by The Honourable Mrs. Justice Allen, President, who considered the court's power to correct its own orders under Order 20 Rule 10 of the Rules of the Supreme Court and its inherent jurisdiction. At paragraphs 21 to 24, President Allen determined:

21. In our view, this is not a question of a clerical mistake arising from an accidental slip or omission, or a question of interpretation which may be answered on appeal, but rather arises under the second limb of the slip rule and/or the inherent power of the Court.

22. We are mindful of the limits of the exercise of the inherent jurisdiction namely, that it ought not to be exercised if it cannot be exercised without injustice or on terms which preclude injustice (above). Similarly, the jurisdiction under the second limb of the slip rule does not enable the court to have second thoughts (See **R v Cripps, exp Muldoon** [1984] 2 All ER 705). Moreover, as Sir John Donaldson said in **Mutual Shipping Corp. of New York v Bayshore Shipping Co. of Monrovia**, the distinction is between second thoughts or intentions and correcting an award of judgment to give true effect to its first thoughts or intentions.

23. In the present case, it is not a question of second thoughts, but of correcting the omission of not granting the consequential relief which was prayed for in the appeal. We are satisfied that had the Notice of Appeal expressly referred to the relief sought rather than doing so by reference to the Amended Originating Summons, the Court would not have made the omission it did in not following through to grant the relief which inevitably flows from the Court's finding, and specifically prayed for by the appellants.

24. In the premises, we are satisfied that no injustice would befall the respondents if the power was exercised to correct what must have been the intention of the Court on acceding to the appeal....

[76.] In *Johann D. Swart et al. v Apollon Metaxides and Silver Point Condominium Apartments*, the court found that exercising its power to correct the judgment would not cause injustice and was necessary to give effect to the Court's original intention in allowing the appeal.

[77.] Both parties relied on the case of *Bristol-Myers Squibb Company v Baker Norton Pharmaceuticals Inc. and Another (Costs)* [2001] EWCA Civ 414. The Claimant seeks to persuade the court that the jurisdiction would be properly exercised by "amendment" of the consent order. The Defendant argues that this court is *functus officio* and that the slip rule is inapplicable in these circumstances.

[78.] In *Bristol-Myers Squibb Company v Baker Norton Pharmaceuticals Inc. and Another (Costs)*, the Appellate court was concerned with whether an order correctly reflected their intention on the determination of an appeal concerning the issue of costs. The court observed that the order under consideration served to deprive "the successful party of interest that had accrued during the time between the order made by the judge and

that of the Court of Appeal”. Noting that that was not the intention of the court, the order was corrected by the court invoking its powers under the slip rule. At paragraphs 25 to 28 of the court’s judgment, Lord Justice Aldous opined...

25

Those cases establish that the slip rule cannot enable a court to have second or additional thoughts. Once the order is drawn up any mistakes must be corrected by an appellate court. However it is possible under the slip rule to amend an order to give effect to the intention of the Court. If the last two cases referred to above had been cited in *Molnlycke*, I believe the obiter statement made by the judge would have been expressed differently.

26

In the present case the only issue raised on the cross-appeal was whether the restriction placed by the judge was appropriate. At no time was that part of the judge's order that required Bristol Myers to pay the defendants' costs challenged and it was not the intention of this Court to alter that part of the order. The intention of this Court was to remove the restriction; not to alter the general right to costs that had been ordered. Thus the correct order allowing the cross-appeal should have left the part of the order of the judge which was not challenged in the form in which it existed.

27

I reject Mr Turner's submission that the mistake was as to the legal effect of the order. The legal effect was not in issue. In my view the terms of the order did not meet the intention of the Court contained in the judgments and that had an unexpected legal effect. The order setting aside the whole of the judge's order on costs was an accidental slip which can and should be corrected under r.40.12. The intention of the Court was to vary the judge's order so as to remove the restriction.

28

I would therefore accede to the application of the defendants and would order that that order of 23rd May 2000 be amended accordingly.

[79.] In *Bristol-Myers*, the order was corrected to reflect the court’s intention regarding costs and interest. In *Johann D. Swart et al*, the order was amended to reflect consequential relief which was the court’s intention in making the declarations (declaring a consent order a nullity) that it did. In *Mutual Shipping Corp*, the award was remitted to the arbitrator for correction to reflect his true findings.

[80.] There is no doubt that a court has jurisdiction to vary its order, including a consent order, in certain circumstances. The referenced cases demonstrate a court’s power to correct an order by fixing errors arising by accident. The cases also emphasize that the purpose of the jurisdiction is not to reconsider the substance of a decision and that the slip rule is not to be used to alter the substance of a judgment or order.

[81.] In assessing the present application, it is important to note that the cases cited by the Claimant are distinguishable from the current circumstances. Unlike those cases, the

order at issue here contains no ambiguity. Nor is there any evident mistake by the court. It is apparent that the Claimant is not seeking to recover amounts that naturally flow from the existing order. The Claimant in this case, seeks to vary the order to include sums not sought in the pleadings and not, *ex facie*, contemplated by the order. The Claimant is not seeking a clarification of an order or a correction of an error. The Claimant is seeking an entirely new order based on events that post-date the pleadings and the consent order. In essence, the Claimant is seeking to achieve by a variation of the order, a reconsideration of the substance of the consent order. That is not permissible.

[82.] I accept the submission of the Defendant that the Claimant ought to pursue any additional amount sought by way of a separate action. The order has been perfected. I accept the submission of the Defendant that this court is *functus officio*.

CONCLUSION - DISMISSAL OF APPLICATION FOR AMENDMENT OR VARIATION OF CONSENT ORDER

[83.] The core of the Claimant's various applications and arguments concerns the periods after institution of the suit and after the consent order was perfected. The gist of the Claimant's several applications and arguments is that since the institution of the action and the perfecting of the consent order, the Defendant has not satisfied the order nor made payments under the contract which was the subject of the action. That may be so but the hurdle that the Claimant cannot cross at this stage is the state of the pleadings. The Claimant is bound by the scope of the pleadings, which only addressed the amount outstanding at the relevant time. An order was made which satisfied that amount. There was no further action by the Claimant because there was no other pleaded figure outstanding. The Claimant did not sue on continuing breaches of contract for an amount to be assessed. The Claimant sued for the specific sum of "\$10,669.50". The Claimant cannot now, years hence, seek judgment for a sum not claimed or on a basis not alleged. It would be unfair and unjust for a court to "vary an order" to include figures not contemplated by the pleadings or by the court order.

[84.] In my opinion, Part 42.10 does not apply in this scenario. The order under review is a consent order, entered in accordance with the terms of the pleaded claim. There is no legal basis for the relief sought by the Claimant.

[85.] In this case, the Claimant is limited to the execution of the consent order for the amount therein stated, i.e. "\$10,669.50 with interest...and costs". The application for a variation or amendment of the consent order is dismissed.

DISMISSAL OF APPLICATION

[86.] The application of the Claimant is dismissed in its entirety.

Receivership under the supervision and direction of the court

[87.] I have taken the time to reflect the essence of the applications before me. One of the submissions of the Defendant was that it was not just to appoint a receiver for the sale of her home “as opposed to selling any personalty or other realty of hers.” However, no other assets were identified by the Defendant or presented to the court. Leading up to the extant applications, the evidence of the Claimant was that, following the examination of the Judgment Debtor/Defendant, it was apparent that the Judgment Debtor/Defendant had no other asset available for satisfaction of the judgment debt. Therefore, there is no evidence of any other “realty” or personal asset before this court.

[88.] The receiver's appointment is a method of executing the judgment debt, which arises from the sum in the consent order. In resisting the Defendant's application, the Claimant has contended that the receiver ought to be able to recover for arrears outstanding and which arrears far exceed the sum claimed and awarded by way of a consent order. For the reasons given in this ruling, the determination of this court is that the judgment debt flows from the sum contained in the consent order. The appointment of the receiver is premised on an executable judgment. In this case, the executable judgment is the consent order.

[89.] This Court determines that the enforceable judgment is the consent order, and the receivership will be conducted under court supervision.

CONCLUSION

[90.] The Defendant's Application is dismissed.

[91.] The Claimant's Application is dismissed in its entirety.

COSTS

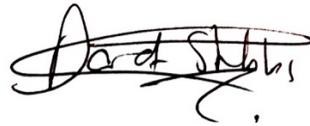
[92.] In this case, neither party was successful on its own application. Each party successfully resisted the application brought against it. The parties will bear their own costs.

ORDER

[93.] The ORDER and directions of this Court are as follows.

- (i) The Defendant's Application is dismissed.
- (ii) The Claimant's Application is dismissed.
- (iii) The parties will bear their own costs.

Dated this 22nd day of January 2026

A handwritten signature in black ink, appearing to read "Carla D. Card-Stubbs, J.", with a large, sweeping flourish underneath.

Carla D. Card-Stubbs, J

Justice